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PAUL D. YASGER
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK IL 60064-6008

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DEC 09 2008

OFFICE OF PETITIONS

In re Patent No. 7,364,752	:	
Fort et al.	:	LETTER REGARDING PATENT
Issued: April 29, 2008	:	TERM ADJUSTMENT AND
Application No. 09/709,829	:	NOTICE OF INTENT TO ISSUE
Filed: November 10, 2000	:	CERTIFICATE OF CORRECTION
Attorney Docket No. 6488USO2	:	

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed May 22, 2008. Pursuant to patentees' duty of good faith and candor to the Office, patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is granted. Patentee is given TWO (2) MONTHS from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of **zero (0) days**.

On April 29, 2008, the above-identified application matured into U.S. Patent No. 7,364,752, with a revised patent term adjustment of 688 days. On May 22, 2008, patentees submitted the instant comment.

Patentees state that they believe that the patent term adjustment of 688 days is incorrect and request reconsideration of the calculation of patent term adjustment.

The application history has been reviewed and it has been determined that the determination of patent term adjustment under 35 U.S.C. 154(b) of 688 days is incorrect.

Patentees should have been assessed delay for the abandonment of the application pursuant to 37 CFR § 1.704(c)(3).

37 CFR § 1.704(c)(3) states:

Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed[.]

In this instance, a final Office action was mailed on January 17, 2003, which set a three-month shortened statutory period for reply. Patentees did not file a timely and proper reply to the final Office action. Thus, the application became abandoned on April 18, 2003. On September 6, 2005, patentees filed a petition under 37 CFR § 1.137(b) to revive the application. A decision granting the petition to revive was mailed on February 10, 2006. Accordingly, the period of adjustment should be reduced by an additional 995 days, the number of days beginning on the date of abandonment, April 18, 2003, and ending on the lesser period of the date that is four months after the date the grantable petition to revive the application was filed, January 6, 2006. See 37 CFR § 1.704(c)(3)(ii). A period of reduction of 995 days will be entered.

Further, patentees should have been assessed delay for the submission of a reply having an omission pursuant 37 CFR § 1.704(c)(7).

37 CFR § 1.704(c)(7) states:

Submission of a reply having an omission (§ 1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed[.]

On April 3, 2006, patentees filed a non-compliant amendment. In response, the Office mailed a Notice of Non-Compliant Amendment (37 CFR § 1.121) on April 10, 2006. On September 1, 2006, patentees filed an amendment correcting the omission.

The submission of a non-compliant amendment is a proper basis for reduction of patent term under 37 CFR § 1.704(c)(7). Accordingly, the period of adjustment of the term of the patent should be reduced by 151 days (not 52 days), the number of days beginning on the day after the date the non-compliant amendment was filed, April 4, 2006, and ending on the date that the amendment correcting the omission was filed, September 1, 2006. Thus, the period of reduction of 52 days will be removed and a period of reduction of 151 days will be entered.

A review of the record also reveals that patentees should have been assessed a delay for filing a reply in excess of three months from the mail date of an Office action pursuant to 37 CFR § 1.704(b).

37 CFR § 1.704(b) states:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection,

argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, a final Office action was mailed on April 16, 2007. Patentees filed their response on October 12, 2007, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR § 1.704(b). Thus, patentees failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should be reduced by an additional 88 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, July 17, 2007, ending on the date the reply was filed, October 12, 2007. See 37 CFR § 1.704(b). Accordingly, a period of reduction of 88 days will be entered.

Lastly, patentees should have been assessed delay pursuant to 37 CFR § 1.704(c)(8) for the submission of a supplemental reply or other paper after a reply had been filed.

37 CFR § 1.704(c)(8) states:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The record reveals that patentees filed an Information Disclosure Statement (IDS) on December 3, 2007, after filing of a reply to the final Office action on October 12, 2007. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS reveals that patentees did not include a statement under 37 CFR 1.704(d).¹ Therefore, the period of adjustment of the term of the patent should be reduced by an additional 52 days, the number of days beginning on the day after the date the initial reply was filed, October 13, 2007, and ending on the date that the IDS was filed, December 3, 2007. See 37 CFR § 1.704(c)(8). Accordingly, a period of reduction of 52 days will be entered.

In view thereof, the patent should have issued with a revised patent term adjustment of **zero (0) days** (875 days of Office delay - 1421 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office the \$200.00 fee as set forth in 37 CFR 1.18(e) is unnecessary and will be refunded to the Deposit Account. The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

This matter is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **zero (0) days**.

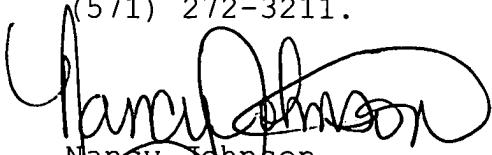
¹ Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

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Application No. 09/709,829

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Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Day : Friday
Date: 12/5/2008

PALM INTRANET

Time: 19:57:58

PTA Calculations for Application: 09/709829

Application Filing Date:	11/10/2000	PTO Delay (PTO):	875
Issue Date of Patent:	04/29/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	187
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-1234		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
96	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		52	
95	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		88	
94	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		151	
93	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	52		
92	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		995	
87.5	04/09/2008	PTA 36 MONTHS	812		
87	04/29/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
86	03/18/2008	EXPORT TO FINAL DATA CAPTURE			
85	03/17/2008	DISPATCH TO FDC			
84	03/17/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
83	03/17/2008	TC RETURN TO PUBS			
82	03/10/2008	ISSUE FEE PAYMENT VERIFIED			
81	03/10/2008	ISSUE FEE PAYMENT RECEIVED			
80	03/05/2008	FINISHED INITIAL DATA CAPTURE			
78	12/31/2007	EMAIL NOTIFICATION			
77	12/31/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
76	12/21/2007	EXPORT TO INITIAL DATA CAPTURE			
75	12/22/2007	ELECTRONIC REVIEW			
74	12/21/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
73	12/21/2007	EMAIL NOTIFICATION			
72	12/19/2007	MAIL NOTICE OF ALLOWANCE			
71	12/12/2007	ISSUE REVISION COMPLETED			
70	12/12/2007	DOCUMENT VERIFICATION			

69	12/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
68	12/08/2007	NOTICE OF ALLOWABILITY			
67	12/03/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	12/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
65	10/12/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
64	10/12/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
63	10/12/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	10/12/2007	REFERENCE CAPTURE ON IDS			
61	10/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	10/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	10/26/2007	DATE FORWARDED TO EXAMINER			
58	10/12/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
57	10/26/2007	DATE FORWARDED TO EXAMINER			
56	10/12/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
55	10/26/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
54	10/12/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
53	10/12/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
47	10/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	10/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	04/16/2007	MAIL FINAL REJECTION (PTOL - 326)			
44	04/14/2007	FINAL REJECTION			
43	02/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42.7	02/19/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		0	40
42	02/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	03/01/2007	DATE FORWARDED TO EXAMINER			

40	02/19/2007	RESPONSE AFTER NON-FINAL ACTION		37	38
39	02/19/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	10/13/2006	MAIL NON-FINAL REJECTION			
37	10/10/2006	NON-FINAL REJECTION			
36	09/01/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	09/01/2006	REFERENCE CAPTURE ON IDS			
34.7	09/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	32
34	09/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	09/12/2006	DATE FORWARDED TO EXAMINER			
32	09/01/2006	RESPONSE AFTER NON-FINAL ACTION		52	30
31	09/01/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	04/11/2006	MAIL NOTICE OF INFORMAL OR NON- RESPONSIVE RCE AMENDMENT			
29	04/10/2006	NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT.			
28	04/10/2006	DATE FORWARDED TO EXAMINER			
27	04/03/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
26	04/10/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
25	04/03/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
24	03/27/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
23	02/10/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
22	09/06/2005	PETITION ENTERED			
21	09/30/2003	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
20	09/30/2003	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
19	01/17/2003	MAIL FINAL REJECTION (PTOL - 326)	22		15
18	01/16/2003	FINAL REJECTION			
17	10/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
16	09/11/2002	DATE FORWARDED TO EXAMINER			
15	08/26/2002	RESPONSE AFTER NON-FINAL ACTION		98	12
		REQUEST FOR EXTENSION OF TIME - GRANTED			

14	08/26/2002			
12	02/20/2002	MAIL NON-FINAL REJECTION	41	-1
11	02/20/2002	NON-FINAL REJECTION		
10.7	11/10/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
10	11/10/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
9	04/20/2001	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED		
8	05/06/2001	CASE DOCKETED TO EXAMINER IN GAU		
7	04/27/2001	APPLICATION DISPATCHED FROM OIPE		
6	04/27/2001	APPLICATION IS NOW COMPLETE		
5	04/27/2001	CORRESPONDENCE ADDRESS CHANGE		
4	02/12/2001	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED		
3	02/11/2001	CORRESPONDENCE ADDRESS CHANGE		
2	12/09/2000	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	11/10/2000	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,364,752 B1

DATED : Apr. 29, 2008

INVENTOR(S) : Fort et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (688) days

Delete the phrase "by 688 days" and insert – by 0 days--